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No. 97-7597

In The

Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Iowa

PETITIONER'S REPLY BRIEF

PAUL ROSENBERG
(Counsel of Record)
MARIA RUHTENBERG
PAUL ROSENBERG & ASSOCIATES, P.C.
601 Locust Street
Suite 947
Des Moines, Iowa 50309
Telephone: (515) 245-3828

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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ARGUMENT

I. THE INTRUSION ON THE CITIZENRY SUFFERED DURING A SEARCH INCIDENT TO CITATION FAR OUTWEIGHS THE STATE'S NEED TO CONDUCT SUCH SEARCHES.

The reasonableness of a search depends on a balance between the state's need to search and "the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignioni-Ponce*, 422 U.S. 873, 878 (1975).[1] The Respondent argues that the intrusion of a search incident to a citation is minimal compared to the state's interests in conducting such searches. However, a full-blown search is far from a minimal intrusion. In addition, the authority police officers have in Iowa is so expansive that it will affect hundreds of thousands of otherwise law-abiding citizens in Iowa, and, if upheld against constitutional challenge here, it will affect millions nationwide.

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[1] The concept that Fourth Amendment reasonableness standards require the balancing of the necessity of the search against the invasion it entails grew out of this Court's decision in *Camara v. Municipal Court*, 387 U.S. 523, 534-38 (1967). ("Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."). The "balancing test" has primarily been employed to determine the reasonableness of governmental assertions of bright-line search authority. *E.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 560-61 (1976) (border searches); *Chandler v. Miller*, 117 S. Ct. 1295, 1301 (1997) (drug taking of political candidates); *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (public school searches of students).

A. The Search Incident to Citation is a Severe Intrusion that Will Affect Millions of Otherwise Law Abiding Citizens.

Police officers in the State of Iowa are authorized to search motorists and their vehicles based only upon issuance of a traffic ticket. Each year in Iowa alone, officers have well over 400,000 opportunities to subject citizens to such searches.[2] Projecting these figures nationwide, the number of traffic citation encounters giving police absolute authority to search would certainly be near 40 million. The state characterizes this as a minimal intrusion.

The logic the state enlists to reach this conclusion is that these otherwise law-abiding citizens ought to be grateful they were not arrested and then searched. This argument sounds more like extortion than legal reasoning.

The fact is that no person will feel anything but extreme embarrassment and humiliation at having every inch of his or her vehicle searched on the basis of a traffic ticket. Furthermore, even the knowledge that the police have such an authority will inflict grave insult on citizens who rightfully expect their personal security and privacy

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[2] Iowa Department of Transportation, Driver History Data Base shows the following annual number of traffic citation convictions in the State of Iowa: 1994: 409,160; 1995: 442,307; and 1996: 449,987. In Iowa, police officers may cite and search for any offense from jaywalking to equipment violations to speeding. *See* Robert R. Rigg, *The Objective Mind and "Search Incident to Citation,"* 8 B.U. Pub. Int. L.J. (forthcoming Spring 1999).

to be off limits to such baseless government search expeditions.

One need not be a personal victim of government abuse to suffer injury. Every election day a huge percentage of Americans do not vote, but try telling them they cannot. So too here, the damage caused by the judicial approval of such a search will far exceed the injury resulting from the actual searches.

The practice of issuing citations in lieu of arrest is designed to minimize the intrusion on violators. Respondent admits that "the practice of issuing citations is a reform aimed at minimizing the severity of warrantless intrusions on Fourth Amendment interests and limiting the length of pretrial detentions." Respondent's Brief, p. 28 (citing ABA Standards for Criminal Justice §§ 10-2.1, 10-2.2, 10-2.3 (2d ed. rev. 1985)). However, the authorization of a search incident to those citations eliminates the purpose of the policy. When arrested, a person has been seized and is in custody and will be taken to jail. A search following such a detention is hardly more intrusive than the arrest itself. Once an arrest is made, the further intrusion of a search is minimal. *United States v. Robinson*, 414 U.S. 218, 237-39 (1973) (J. Powell, concurring). By contrast, "the detention of a motorist pursuant to a traffic stop is presumptively temporary and brief." *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). An ensuing search would be extremely intrusive compared to the brief detention associated with a traffic stop.

A search that includes the examination and probing of the clothing, purses, briefcases, bags, and all parts of

the vehicle cannot, by any definition, be termed a "minimal intrusion." Every motorist is eligible for such a search based on *any* violation of the law, whether that violation be a traffic infraction or the most serious felony.[3] The search incident to citation, therefore, cannot be considered a minimal intrusion on the privacy interests of the American people.

B. The State's Interests Will Not be Furthered by a Search Incident to a Citation.

The state's claim of the threat of death or serious injury associated with the act of citing a traffic offender is an extremely cynical and statistically unsupported position. The statistics cited by Respondent do not accurately reflect how officers will be able to protect themselves by seizing weapons. Of the 4,333 officers assaulted in 1996, 3,091 were assaulted by using "personal weapons" described as "any part of the body – hands, fists, feet, etc. – which can be employed as a weapon." Uniform Crime Reports, 1996, United States Department of Justice, Federal Bureau of Investigations, "Law Enforcement Officers Killed and Assaulted," pp. 1, 69. Police cannot prevent such assaults by searching because these "personal weapons" are not seizable. In fact, the only way to prevent such assaults is to effect a custodial arrest.

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[3] It is common knowledge that citations are not generally used to initiate prosecutions for serious offenses. Also, the existence of probable cause to arrest for many major crimes establishes cause to search. Under *Carroll v. United States*, 267 U.S. 132 (1925), police already have authority to search a vehicle without a warrant in those circumstances.

In 1996, 1,242 officers were assaulted using some type of weapons that can be seized. *Id.* at 69. Eleven officers were killed during traffic stops and pursuits in 1996. *Id.* at 29. These numbers are very small when compared to the number of traffic stops officers make each year. In Iowa no police officer was feloniously killed from 1987 to 1996. *Id.* at 23. However, officers stopped and cited approximately 4 million people during that same time period.

Any time an officer is killed in the line of duty it is a tragedy. However, the law cannot protect officers from every eventuality as long as the Bill of Rights exists. A free society will not long survive when law enforcement tactics are justified and judicially approved on the groundless fear that every motor vehicle contains a Ted Bundy or Timothy McVeigh. Respondents Brief, p. 26 n.8. In fact, Respondent's brief contains many such cynical examples.[4]

Police already have ample authority to safely effectuate a traffic stop. If the officer has probable cause, he may search the motorist and the vehicle at the scene. *Carroll v.*

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[4] For example, the state argues that the authority to search during a traffic stop is necessary to protect officers from all motorists and allow suspicionless searches because motorists might have outstanding warrants, are evading "creditors or others," or do not even know they are suspects to a crime. Respondent's Brief, pp. 26-27. The state does not explain how this authority to search will protect an officer from a person who is trying to evade creditors or anyone else. It is unclear why one evading creditors would feel the need to attack a police officer. The state also does not explain why a person would become violent if he does not even know he is suspected of a crime.

United States, 267 U.S. 132, 153 (1925). The police may conduct a full search incident to a custodial arrest, including the interior of the vehicle. *United States v. Robinson*, 414 U.S. 218, 235 (1973); *New York v. Belton*, 453 U.S. 454, 460 (1981). The officer may seize evidence that is in plain view. *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971). The officer can pat down the motorist and the vehicle upon suspicion that the person is armed and dangerous. *Terry v. Ohio*, 391 U.S. 1, 30 (1968); *Michigan v. Long*, 463 U.S. 1032, 1049 (1983). The officer can order the driver and the passengers out of the vehicle while he has them detained during a traffic stop. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977); *Maryland v. Wilson*, 117 S. Ct. 882, 884 (1997). The officer can detain the motorist to secure consent to search the vehicle. *Ohio v. Robinette*, 117 S. Ct. 417, 421 (1996). Any further authority to search based on the issuance of a traffic citation will not provide police officers with additional tools to protect themselves that they do not already have.

The state also claims that the authority to search incident to a citation is necessary to preserve evidence. During a traffic stop like the one at issue in this case, there can be no further evidence of the infraction. The officer obtained sufficient evidence and cited Knowles prior to the search. (App. p. 18). That part of the stop was finished. The officer needed no further evidence of speeding. (App. pp. 18-19). No further identifying information from Knowles was required to issue the citation. Therefore, the state's interest to preserve evidence of the traffic infraction is not an issue.

However, the Respondent also justifies the search on the state's desire to preserve evidence of some yet undetected crime. Respondent's Brief, p. 27. Such a search should not be permitted based on the possibility that the officer may discover evidence of a crime that has yet to be detected. A search incident to arrest is not meant to be a fishing expedition. The Respondent apparently requests the Court to expand this exception to allow the officer to search without making an arrest for the purpose of seizing any evidence he can find. This is not a valid state interest. The level of intrusion that the individual would suffer greatly outweighs the state's desire to stumble on to evidence of an undetected crime.

II. A SEARCH INCIDENT TO ARREST REQUIRES A CUSTODIAL ARREST, NOT JUST PROBABLE CAUSE TO MAKE A CUSTODIAL ARREST

The State's main argument in support of Iowa's search incident to citation statute is that such a search is a judicially recognized or logical subspecies of search incident to arrest and is therefore *per se* reasonable under the Fourth Amendment. This is true, the state maintains, because it is the existence of probable cause to arrest, and not an actual custodial arrest, which justifies the search. However, neither jurisprudence nor logic support this claim.

The Respondent has misconstrued 25 years of United States Supreme Court doctrine by asserting that it is probable cause to arrest, not the arrest itself, that justifies a search incident to arrest. Respondent's Brief, pp. 14, 20, 21-23, 29, 39, 45. The search incident to arrest exception to

the warrant requirement has always been based on a custodial arrest.

In *United States v. Robinson*, 414 U.S. 218, 235 (1973), this Court held that "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search. . . . " The principle is again stated in *Gustafson v. Florida*, 414 U.S. 260, 265 (1973): "It is sufficient that the officer had probable cause to arrest . . . and that he lawfully effectuated the arrest, and placed the petitioner in custody."

This Court's decision in *Michigan v. DeFillippo*, 443 U.S. 31, 35 (1979), cited *Robinson* as establishing the following proposition: "The constitutionality of a search incident to an arrest does not depend on whether there is any indication that the person arrested possesses weapons or evidence. The fact of a lawful arrest, standing alone, authorizes a search." Although a 6-3 decision, not one Justice in *DeFillippo* disputed the majority opinion's characterization of the *Robinson* holding.

This Court refused to hold that a full *Chimel*[5] search is justified without a formal arrest. *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). The Court did, however, uphold a full search of the interior of an automobile only when the

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[5] In *Chimel v. California*, 395 U.S. 752, 763 (1969), the Court established the scope of a search incident to arrest as being a search of the arrestee's person and the area within his immediate control.

officer "has made a lawful *custodial* arrest of an occupant of the automobile." *New York v. Belton*, 453 U.S. 454, 460 (1981) (emphasis added). In *United States v. Edwards*, the Court explained that the search incident to arrest exception to the warrant requirement "has traditionally been justified by the reasonableness of searching for weapons, instrumentalities of escape, and evidence of crime when a person is taken into *official custody and lawfully detained.*" 415 U.S. 800, 802-03 (1974) (citing *Robinson*, 414 U.S. at 235) (emphasis added).

The defendant in *Michigan v. Long*, 463 U.S. 1032, 1035 n.1 (1983), could have been arrested for a number of crimes, but he was not. The Court did not decide that the police may conduct a search as broad as a *Belton* search when there is probable cause to arrest but no arrest is made. *Id.*

The justifications for the exception support the proposition that it is the peculiar features of a custodial arrest, and not the mere existence of probable cause to arrest, that necessitates the incidental search. First, the officer faces greater danger during extended exposure to a suspect while taking him into custody than when the suspect is merely briefly detained. *Robinson*, 414 U.S. at 234-35. Second, "[w]here there is no formal arrest . . . a person might well be less hostile to the police and less likely to take conspicuous, immediate steps to destroy incriminating evidence. . . . " *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). Third, once an arrest has been made, an ensuing search is not any more intrusive. *Robinson*, 414 U.S. at 237-39 (J. Powell, concurring). None of these justifications exist when a citation is issued in lieu of arrest.

In support of its position that probable cause to arrest alone justifies a search, the state relies on several of this Court's decisions in which a search was held reasonable although it preceded a custodial arrest. *Rawlings v. Kentucky*, 448 U.S. 98, 111-12 (1980), and *Sibron v. New York*, 392 U.S. 40, 66-67 (1968), found no constitutional significance in the fact that the questioned search occurred prior to a custodial arrest. The state thus concludes that the decisive factor justifying the search is probable cause to arrest.

The *Rawlings* and *Sibron* decisions, however, deal only with the issue of the timing of the search incident to an arrest. They do not address or even shed light on circumstances where the police officer issues a speeding ticket and no custodial arrest is made, nor contemplated.

In this case, although the officer had probable cause to arrest Knowles for speeding, he did not. (App. p. 14). He did not intend to arrest him for speeding as evidenced by the fact that he issued a citation. (App. p. 14). Knowles was arrested for the fruits of the search. Had this Court intended the *Sibron* holding to require only probable cause to arrest to justify a search incident to arrest, it would not have required a custodial arrest five years later in *Robinson* and *Gustafson*. Similarly, had the Court intended the *Rawlings* decision to broaden the search incident to arrest exception to only require probable cause to arrest, it would not have held one year later in *Belton* that a custodial arrest was a condition precedent to searching the passenger compartment of a vehicle incident to that arrest.

III. THE STATE OF IOWA HAS WAIVED ITS RIGHT TO RELY ON THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE BY FAILING TO RAISE THIS CLAIM IN THE IOWA COURTS.

The State has waived its right to rely on the good faith exception to the exclusionary rule by its failure to raise the issue before the trial court and Iowa Supreme Court. The rules of procedure in this Court and in the Iowa courts require that the issue be preserved by asserting it at the inception of the litigation and not for the first time before this Court more than two years after Knowles filed his motion to suppress.

The Iowa Supreme Court strictly adheres to the "error preservation rule," which forbids litigants from raising issues on appeal that have not been presented to the trial court. *State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997); *State v. Eames*, 565 N.W.2d 323, 326 (Iowa 1997); *Patchette v. State*, 374 N.W.2d 397, 401 (Iowa 1985).

Additionally, Iowa has no "plain error" rule that allows appellate courts to decide issues not raised below. *Lamphere v. State*, 348 N.W.2d 212, 218 (Iowa 1984); *State v. Miles*, 344 N.W.2d 231, 233 (Iowa 1984).

The Iowa error preservation rule applies with equal force to constitutional claims. *State v. Kinkead*, 570 N.W.2d 97, 102 (Iowa 1997); *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994); *Patchette*, 374 N.W.2d at 401.

The State failed to urge the good faith issue before the trial court, thus, it would have been waived had it

been argued before the Iowa Supreme Court.[6] However, the State did not raise the issue there either.

Good faith is now raised for the first time in Respondent's brief. This Court is no less strict in refusing to address issues not previously asserted: " 'Ordinarily, this court does not decide questions not raised or resolved in the lower court[s].' " *Taylor v. Freeland & Kranz*, 503 U.S. 638, 645-46 (1992) (quoting *Youakim v. Miller*, 425 U.S. 231, 234 (1976)). *Taylor* alludes to "unusual circumstances" that warrant deviation from the rule. However, the good faith exception for reliance on legislation first announced in *Illinois v. Krull*, 480 U.S. 340 (1987), gave the State nearly 10 years notice of its availability. Additionally, since the good faith exception to the exclusionary rule goes only to the remedy available for a Fourth Amendment violation, the issue cannot be viewed as an essential and necessary component of the substantive issue before this Court. *See Ohio v. Robinette*, 117 S.Ct. 417, 420 (1996); *Vance v. Terrazas*, 444 U.S. 252, 258, n.5 (1980).

Finally, the State's failure to raise the good faith exception in the Iowa courts likely caused prejudice to Knowles because he could have sought to exclude the fruits of the search under Iowa constitutional and statutory search and seizure law. *State v. Thomas*, 540 N.W.2d

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[6] For instance, the Iowa Supreme Court refused to consider Knowles's claim that the statutory authorization for custodial arrest for speeding was an unconstitutional seizure, as Knowles did not raise it in his motion to suppress in the trial court. (App. p. 33). That issue was therefore waived. The court would have considered any good faith argument first raised in the Iowa Supreme Court waived as well.

658, 666 (Iowa 1995) ("We note . . . that we have not yet recognized a good faith exception to the exclusionary rule under the Iowa Constitution, article I, section 8 . . . "); Iowa R. Crim. P. 11 (providing for the exclusion of evidence unlawfully searched for or seized). The avoidance of such prejudice is certainly one of the justifications underlying the error preservation rule, and there are no "unusual circumstances" requiring this Court to hear the issue without first being properly raised and argued in the courts below.

IV. THE QUESTION PRESENTED CHALLENGES THE CONSTITUTIONALITY OF IOWA CODE SECTION 805.1(4) TO THE EXTENT THAT IT AUTHORIZES A SEARCH INCIDENT TO CITATION.

The Respondent argues that Knowles has made a facial challenge to Iowa Code section 805.1(4). Respondent's Brief pp. 11-13. He has not. The issue Knowles has presented to this Court is whether statutory authorization to search incident to a citation is constitutional under the Fourth Amendment. A state may pass laws on search and seizure procedures, but "[i]t may not . . . authorize police conduct which trenches upon Fourth Amendment rights . . . . " *Sibron v. New York*, 392 U.S. 40, 60-61 (1968). The constitutional analysis focuses on the conduct the statute authorizes rather than the words of the statute. *Id.* at 62. Knowles challenges the police conduct the statute authorizes, not the words of the statute.

Respondent admits that Knowles challenges that statute as it applies to a search incident to issuance of a

traffic citation; in other words, as it applies to Knowles: "Knowles' [sic] statement of the question presented and his brief on the merits challenge section 805.1(4) only *as it applies* to issuance of a traffic citation."[7] Respondent's Brief, p. 13 (emphasis added). This is precisely the type of challenge to statutory authorization which was permitted by the *Sibron* Court.

The State has incorrectly framed the issue Knowles has presented in the Iowa courts and is reasserting here. Patrick Knowles is attacking the legality of the search of his automobile under the Fourth Amendment, plain and simple. It is because the police officer justified his search only under the Iowa statute that the law's validity must necessarily be questioned.

The search of Knowles's vehicle was initially attacked by a motion to suppress, which stated in part:

* * *

> 6. The officer did not have probable cause to search the defendant's car, nor did he obtain a search warrant.

[7] Knowles challenges the search in the context of a traffic citation because that is the factual situation in this case. Knowles could not preserve the issue of a search incident to a citation for some other non-traffic offense because he was not cited and searched for some other non-traffic offense. Therefore, Respondent's assertion that Knowles "does not even challenge the constitutionality of search incident to citations of non-traffic offenses" is a misleading argument since that is not the factual situation in this case. Respondent's Brief, p. 13. It is the Respondent that proposes the Court adopt a bright-line rule that would encompass all citations whether they be for traffic offenses or more serious crimes. Respondent's Brief, pp. 36-38.

> 7. The officer stated in his report that the search was conducted "incident to citation."
>
> 8. No such exception to the warrant requirement exists under the Fourth Amendment to the Constitution.
>
> 9. Because the officer had no probable cause and no search warrant, and the search cannot otherwise be justified under the Fourth Amendment, the search of the car was unconstitutional. . . .

(App. p. 7).

At the suppression hearing, the officer justified the search only upon the statutory authority to search incident to citation:

> Q. Anything you observed lead you to believe or give you probable cause to believe that he was involved in criminal activity?
>
> A. Not on this date, no.
>
> Q. Was it your feeling that your knowledge of his past problems or your past knowledge of Mr. Knowles, did that give you probable cause to search his vehicle?
>
> A. No, the speeding gave me probable cause to search the vehicle. . . .
>
> Q. Was the search of his vehicle and his person conducted after he received the copy of the citation?
>
> A. Yes, ma'am. . . .
>
> Q. Did you need, at that point, to obtain any further evidence of speeding?

A. Not of speeding, no.

Q. It was your understanding that simply because you had issued him a citation that that gave you the right – without any further probable cause gave you the right to search him and his vehicle?

A. Yes, ma'am.

(App. pp. 17-19).

Both the district court and the Iowa Supreme Court found the search lawful only on the basis of authority granted to police under the search incident to citation statute. (App. pp. 20-21, 30-34).

The statute must necessarily be challenged because the police officer, the prosecutors, and the Iowa courts maintain it is the only justification for the search. Because the statutory authorization is a bright-line rule allowing blanket authority to search all vehicles under any circumstance where a citation has been issued, the counter arguments must be responsive. Patrick Knowles would gladly limit his Fourth Amendment attack to the narrow facts peculiar to his case; however, the Iowa authorities did not seek to justify the search on any other basis than a broad and abstract authority to search any person cited for a traffic offense.

In fact, the state ignores its own admonition in urging this Court to adopt a bright-line rule authorizing all searches incident to citation. Respondent's Brief, pp. 36-38. Respondent argues for "A bright-line rule authorizing search incident to citation is necessary to ensure uniform application of the protections of the Fourth Amendment." Respondent's Brief, p. 36. To the extent

Knowles's Fourth Amendment arguments have strayed into the abstract, it is only in pursuit of bright-line search justification thrown in his path by the State of Iowa.

Knowles's arguments are precisely as individualized and case specific as the officer's justification to search his vehicle and the Iowa Supreme Court's reasoning in upholding it. Since the search was approved based on the authority granted by Iowa Code section 805.1(4), Knowles has challenged the statute to the extent it grants such authority. This Court has jurisdiction to consider the question presented.

CONCLUSION

For the above reasons as well as those presented in Petitioner's Brief, Petitioner respectfully prays the Court will reverse the decision of the Iowa Supreme Court.

Respectfully submitted,

PAUL ROSENBERG
(Counsel of Record)
MARIA RUHTENBERG
PAUL ROSENBERG &
ASSOCIATES, P.C.
601 Locust Street, Suite 947
Des Moines, Iowa 50309
Telephone: (515) 245-3828

Counsel for Petitioner